

AMENDED IN ASSEMBLY JUNE 17, 2008

AMENDED IN ASSEMBLY JUNE 5, 2008

AMENDED IN SENATE JANUARY 7, 2008

AMENDED IN SENATE APRIL 17, 2007

AMENDED IN SENATE MARCH 20, 2007

## SENATE BILL

**No. 31**

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### Introduced by Senator Simitian

December 4, 2006

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An act to add Title 1.80 (commencing with Section 1798.79) to Part 4 of Division 3 of the Civil Code, relating to privacy.

#### LEGISLATIVE COUNSEL'S DIGEST

SB 31, as amended, Simitian. Identification documents.

The Information Practices Act of 1977 regulates the collection and disclosure of personal information regarding individuals by state agencies, except as specified. Existing law also prohibits certain business entities, as defined, from making specified disclosures in relation to individual consumer records.

This bill would provide that a person or entity that intentionally remotely reads or attempts to remotely read a person's identification document using radio waves without his or her knowledge and prior consent, as described, shall be punished by imprisonment in a county jail for up to one year, a fine of not more than \$1,500, or both that fine and imprisonment, *except as specified*. The bill would also provide that a person or entity that knowingly discloses, or causes to be disclosed, specified operational system keys shall be punished by imprisonment in a county jail for up to one year, a fine of not more than \$1,500, or

both that fine and imprisonment. ~~The bill would also provide that a person or entity that unintentionally remotely reads a person's identification document using radio waves would be punished by imprisonment in a county jail for up to one year, a fine of not more than \$1,500, or both that fine and imprisonment, only if the person or entity thereafter intentionally stores what it read, or intentionally discloses what it read to a 3rd party, for the purpose of reading a person's identification document without the knowledge and prior consent of the person whose identification document was read.~~

~~By~~ By creating new crimes, this bill would ~~result in~~ impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: yes.

*The people of the State of California do enact as follows:*

1 SECTION 1. The Legislature hereby finds and declares all of  
2 the following:

3 (a) The right to privacy is a personal and fundamental right  
4 protected by Section 1 of Article I of the California Constitution  
5 and by the United States Constitution. All individuals have a right  
6 of privacy in information pertaining to them.

7 (b) This state has previously recognized the importance of  
8 protecting the confidentiality and privacy of an individual's  
9 personal information contained in identification documents such  
10 as driver's licenses.

11 SEC. 2. Title 1.80 (commencing with Section 1798.79) is added  
12 to Part 4 of Division 3 of the Civil Code, to read:

13

14 TITLE 1.80. IDENTIFICATION DOCUMENTS

15

16 1798.79. (a) Except as provided in subdivisions ~~(d) and (e)~~  
17 ~~(c) and (d)~~, a person or entity that intentionally remotely reads or  
18 attempts to remotely read a person's identification document using  
19 radio waves, for the purpose of reading that person's identification

1 document without that person's knowledge and prior consent, shall  
2 be punished by imprisonment in a county jail for up to one year,  
3 a fine of not more than one thousand five hundred dollars (\$1,500),  
4 or both that fine and imprisonment.

5 ~~(b) A person or entity that unintentionally remotely reads a~~  
6 ~~person's identification document using radio waves shall be~~  
7 ~~punished by imprisonment in a county jail for up to one year, a~~  
8 ~~fine not to exceed one thousand five hundred dollars (\$1,500), or~~  
9 ~~both that fine and imprisonment, only under the following~~  
10 ~~circumstances:~~

11 ~~(1) The person or entity knows it unintentionally read the~~  
12 ~~document and thereafter intentionally discloses what it read to a~~  
13 ~~third party for the purpose of allowing a third party to read a~~  
14 ~~person's identification document without that person's knowledge~~  
15 ~~and prior consent.~~

16 ~~(2) The person or entity knows it unintentionally read the~~  
17 ~~document and thereafter intentionally stores what it read for the~~  
18 ~~purpose of reading a person's identification document without that~~  
19 ~~person's knowledge and prior consent.~~

20 ~~(c)~~

21 ~~(b)~~ A person or entity that knowingly discloses, or causes to be  
22 disclosed, the operational system keys used in a contactless  
23 identification document system shall be punished by imprisonment  
24 in a county jail for up to one year, a fine of not more than one  
25 thousand five hundred dollars (\$1,500), or both that fine and  
26 imprisonment.

27 ~~(d)~~

28 (c) Subdivision (a) shall not apply to:

29 (1) The reading of a person's identification document for triage  
30 or medical care during a disaster and immediate hospitalization or  
31 immediate outpatient care directly related to a disaster, as defined  
32 by the local emergency medical services agency organized under  
33 Section 1797.200 of the Health and Safety Code.

34 (2) The reading of a person's identification document by a health  
35 care professional for reasons relating to the health or safety of that  
36 person or an identification document issued to a patient by  
37 emergency services.

38 (3) The reading of an identification document of a person who  
39 is incarcerated in the state prison or a county jail, detained in a  
40 juvenile facility operated by the Division of Juvenile Facilities in

1 the Department of Corrections and Rehabilitation, or housed in a  
2 mental health facility, pursuant to a court order after having been  
3 charged with a crime, or to a person pursuant to a court-ordered  
4 electronic monitoring.

5 (4) Law enforcement or government personnel who need to  
6 read a lost identification document when the owner is unavailable  
7 for notice, knowledge, or consent, or those parties specifically  
8 authorized by law enforcement or government personnel for the  
9 limited purpose of reading a lost identification document when  
10 the owner is unavailable for notice, knowledge, or consent.

11 (5) Law enforcement personnel who need to read a person's  
12 identification document after an accident in which the person is  
13 unavailable for notice, knowledge, or consent.

14 (6) Law enforcement personnel who need to read a person's  
15 identification document pursuant to a search warrant.

16 (7) The reading of a person's identification document in the  
17 course of an act of good faith security research, experimentation,  
18 or scientific inquiry, including, but not limited to, activities useful  
19 in identifying and analyzing security flaws and vulnerabilities.

20 (8) *A person or entity that in the course of operating its own*  
21 *contactless identification document system inadvertently reads or*  
22 *collects data from another contactless identification document*  
23 *system, if once the person or entity becomes aware that it has*  
24 *inadvertently read or collected data, it does not do any of the*  
25 *following:*

26 (A) *Disclose the data to another party.*

27 (B) *Use the data for any purpose without the consent of the*  
28 *person to whom the data pertains.*

29 (C) *Store the data without the consent of the person to whom*  
30 *the data pertains.*

31 ~~(e)~~

32 (d) Nothing in this section shall affect the existing rights of law  
33 enforcement to access data stored electronically on driver's  
34 licenses.

35 ~~(f)~~

36 (e) The penalties set forth in subdivisions ~~(a), (b), and (c)~~ (a)  
37 and (b) are independent of, and do not supersede, any other  
38 penalties provided by state law, and in the case of any conflict, the  
39 greater penalties shall apply.

1798.795. For purposes of this title, the following definitions shall apply:

(a) “Contactless identification document system” means a group of identification documents issued and operated under a single authority that use radio waves to transmit data remotely to readers intended to read that data. In a contactless identification document system, every reader must be able to read every identification document in the system.

(b) “Data” means any information stored or transmitted on an identification document in machine-readable form.

(c) “Identification document” means any document containing data that is issued to an individual and which that individual, and only that individual, uses alone or in conjunction with any other information for the primary purpose of establishing his or her identity. Identification documents specifically include, but are not limited to, the following:

(1) Driver’s licenses or identification cards issued pursuant to Section 13000 of the Vehicle Code.

(2) Identification cards for employees or contractors.

(3) Identification cards issued by educational institutions.

(4) Health insurance or benefit cards.

(5) Benefit cards issued in conjunction with any government-supported aid program.

(6) Licenses, certificates, registration, or other means to engage in a business or profession regulated by the Business and Professions Code.

(7) Library cards issued by any public library.

(d) “Key” means a string of bits of information used as part of a cryptographic algorithm used in encryption.

(e) “Reader” means a scanning device that is capable of using radio waves to communicate with an identification document and read the data transmitted by that identification document.

(f) “Remotely” means that no physical contact between the identification document and a reader is necessary in order to transmit data using radio waves.

SEC. 3. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty

- 1 for a crime or infraction, within the meaning of Section 17556 of
- 2 the Government Code, or changes the definition of a crime within
- 3 the meaning of Section 6 of Article XIII B of the California
- 4 Constitution.

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